

Texas Administrative Code

TITLE 31 NATURAL RESOURCES AND CONSERVATION
PART 2 TEXAS PARKS AND WILDLIFE DEPARTMENT
CHAPTER 57 FISHERIES
SUBCHAPTER A HARMFUL OR POTENTIALLY HARMFUL EXOTIC
FISH, SHELLFISH AND AQUATIC PLANTS

Rules

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RULE §57.111 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Aquaculture or fish farming--The business of producing and selling cultured species raised in private facilities.
- (2) Certified Inspector--An employee of the Texas Parks and Wildlife Department or the Texas A&M Sea Grant College Program who has satisfactorily completed a department approved course in clinical analysis of shellfish.
- (3) Cultured species--Aquatic plants or wildlife resources raised under conditions where at least a portion of their life cycle is controlled by an aquaculturist.
- (4) Clinical Analysis Checklist--An inspection form provided by the department specifying sampling protocols and listing certain characteristics which may constitute manifestations of disease.
- (5) Department--The Texas Parks and Wildlife Department or a designated employee of the department.
- (6) Director--The executive director of the Texas Parks and Wildlife Department.
- (7) Disease--Contagious pathogens or injurious parasites which may be a threat to the health of natural populations of aquatic organisms.
- (8) Disease-Free--A status, based on the results of an examination conducted by a department approved shellfish disease specialist that certifies a group of aquatic organisms as being free of disease.
- (9) Exotic species--A nonindigenous plant or wildlife resource not normally found in public water of this state.
- (10) Fish farm--The property including all drainage ditches and private facilities from which cultured species are produced, held, propagated, transported, or sold.
- (11) Fish farm complex--A group of two or more separately owned fish farms located at a common site and sharing privately owned water diversion or drainage structures.
- (12) Fish farmer--Any person holding a valid license to engage in aquaculture or fish farming under Agriculture Code, Chapter 134.
- (13) Grass carp--The species *Ctenopharyngodon idella*.
- (14) Harmful or potentially harmful exotic fish--
 - (A) Lampreys Family: Petromyzontidae--all species except *Ichthyomyzon castaneus* and *I. gagei*;
 - (B) Freshwater Stingrays Family: Potamotrygonidae--all species;
 - (C) Arapaima Family: Osteoglossidae--*Arapaima gigas*;
 - (D) South American Pike Characoids Family: Characidae--all species of genus *Acestrorhynchus*;
 - (E) African Tiger Fishes Subfamily: Hydrocyninae--all species;
 - (F) Piranhas and Priambebus Subfamily: Serrasalminae--all species;
 - (G) Rhamphodontid Characoids Subfamily: Rhamphodontinae--all species of genera *Hydrolycus* and *Rhamphodon* (synonymous with *Cynodon*);
 - (H) Dourados Subfamily: Bryconinae--all species of genus *Salminus*;
 - (I) South American Tiger Fishes Family: Erythrinidae--all species;
 - (J) South American Pike Characoids Family: Ctenolucidae--all species of genera *Ctenolucius* and *Luciocharax* (synonymous with *Boulengerella* and *Hydrocinus*);
 - (K) African Pike Characoids Families: Hepsetidae Ichthyboridae--all species;
 - (L) Electric Eels Family: Electrophoridae--*Electrophorus electricus*;
 - (M) Carps and Minnows Family: Cyprinidae--all species and hybrids of species of genera: *Abramis*, *Aristichthys*, *Aspius*, *Aspiolucius*, *Blicca*, *Catla*, *Cirrhina*,

Ctenopharyngodon, Elopichthys, Hypophthalmichthys, Leuciscus, Megalobrama, Mylopharyngodon, Parabramis, Pseudaspius, Rutilus, Scardinius, Thynnichthys, Tor, and the species *Barbus tor* (synonymous with *Barbus hexoagoniolepis*);

(N) Walking Catfishes Family: Clariidae--all species;

(O) Electric Catfishes Family: Malapteruridae--all species;

(P) South American Parasitic Candiru Catfishes Subfamilies: Stegophilinae

Vandelliinae--all species;

(Q) Pike Killifish Family: Poeciliidae--*Belonesox belizanus*;

(R) Marine Stonefishes Family: Synanceiidae--all species;

(S) Tilapia Family: Cichlidae--all species of genus *Tilapia* (including *Sarotherodon* and *Oreochromis*);

(T) Asian Pikeheads Family: Luciocephalidae--all species;

(U) Snakeheads Family: Channidae--all species;

(V) Walleyes Family: Percidae--all species of the genus *Stizostedion* except *Stizostedion vitreum* and *S. canadense*;

(W) Nile Perch Family: Centropomidae--all species of genera *Lates* and *Luciolates*;

(X) Drums Family: Sciaenidae--all species of genus *Cynoscion* except *Cynoscion nebulosus*, *C. nothus*, and *C. arenarius*;

(Y) Whale Catfishes Family: Cetopsidae--all species;

(Z) Ruff Family: Percidae--all species of genus *Gymnocephalus*;

(AA) Air sac Catfishes Family;

(BB) Swamp Eels, Rice Eels or One-Gilled Eel Family: Synbranchidae--all species;

(CC) Anguillidae--all species except *Anguilla rostrata*;

(DD) Heteropneustidae--All species of genus *Heteropneustes*.

(15) Harmful or potentially harmful exotic shellfish--

(A) Crayfishes Family: Parastacidae--all species of the genus *Astacopsis*;

(B) Mitten crabs Family: Grapsidae--all species of genus *Eriocheir*;

(C) Giant Ram's-horn Snails Family: Piliidae (synonymous with Ampullariidae)--all species of genus *Marisa*;

(D) Zebra Mussels Family: Dreissenidae--all species of genus *Dreissena*;

(E) Penaeid Shrimp Family: Penaeidae--all species of genus *Litopenaeus* and *Farfantepenaeus* except *L. setiferus*, *F. aztecus* and *F. duorarum*.

(F) Pacific Oyster Family: Ostreidae--*Crassostrea gigas*.

(G) Applesnails Family: Ampullariidae--Channeled Applesnail (*Pomacea canaliculata*).

(16) Harmful or potentially harmful exotic plants--

(A) Giant Duckweed Family: Lemnaceae--*Spirodela oligorhiza*;

(B) Salvinia Family: Salviniaceae--all species of genus *Salvinia*;

(C) Waterhyacinth Family: Pontederiaceae--*Eichhornia crassipes*;

(D) Waterlettuce Family: Araceae--*Pistia stratiotes*;

(E) Hydrilla Family: Hydrocharitaceae--*Hydrilla verticillata*;

(F) Lagarosiphon Family: Hydrocharitaceae--*Lagarosiphon major*;

(G) Eurasian Watermilfoil Family: Haloragaceae--*Myriophyllum spicatum*;

(H) Alligatorweed Family: Amaranthaceae--*Alternanthera philoxeroides*;

(I) Rooted Waterhyacinth Family: Pontederiaceae--*Eichhornia azurea*;

(J) Paperbark Family: Myrtaceae--*Melaleuca quinquenervia*;

(K) Torpedograss Family: Gramineae--*Panicum repens*;

(L) Water spinach Family: Convolvulaceae--*Ipomoea aquatic*.

(17) Harmful or potentially harmful exotic species exclusion zone--That area south of SH 21, from its intersection with the Texas/Louisiana border, approximately five miles due east of Milam, Texas, not including that area of Brazos County south of SH 21, to San Marcos; thence south of IH 35 to Laredo.

(18) Immediately--Without delay; with no intervening span of time.

(19) Manifestations of disease--Manifestations of disease include, but are not limited to, one or more of the following: heavy or unusual predator activity, empty guts, emaciation, rostral deformity, digestive gland atrophy or necrosis, gross pathology of shell or underlying skin typical of viral infection, fragile or atypically soft shell, gill fouling, or gill discoloration.

(20) Nauplius or nauplii--A larval crustacean having no trunk segmentation and only three pairs of appendages.

(21) Operator--The person responsible for the overall operation of a wastewater treatment facility.

(22) Place of business--A permanent structure on land where aquatic products or orders for aquatic products are received or where aquatic products are sold or purchased.

(23) Postlarva--A juvenile crustacean having acquired a full complement of functional appendages.

(24) Private facility--A pond, tank, cage, or other structure capable of holding cultured species in confinement wholly within or on private land or water, or within or on permitted public land or water.

(25) Private facility effluent--Any and all water which has been used in aquaculture activities.

(26) Private pond--A pond, tank, lake, or other structure capable of holding cultured species in confinement wholly within or on private land.

(27) Public aquarium--An American Association of Zoological Parks and Aquariums accredited facility for the care and exhibition of aquatic plants and animals.

(28) Public waters--Bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

(29) Quarantine condition--Confinement of exotic shellfish such that neither the shellfish nor the water in which they are or were maintained comes into contact with other fish or shellfish.

(30) Triploid grass or black carp--A grass carp (*Ctenopharyngodon idella*) or black carp (*Mylopharyngodon piceus*) which has been certified by the United States Fish and Wildlife Service as having 72 chromosomes and as being functionally sterile.

(31) Waste--Waste shall have the same meaning as in Chapter 26, §26.001(6) of the Texas Water Code.

(32) Water in the state--Water in the state shall have the same meaning as in Chapter 26, §26.001(5) of the Texas Water Code.

(33) Wastewater treatment facility--All contiguous land and fixtures, structures or appurtenances used for treating wastewater pursuant to a valid permit issued by the Texas Natural Resource Conservation Commission.

Source Note: The provisions of this §57.111 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective December 29, 1997, 22 TexReg 12535; amended to be effective June 21, 1998, 23 TexReg 6507; amended to be effective July 19, 2000, 25 TexReg 6772; amended to be effective April 30, 2001, 26 TexReg 3219

RULE §57.112 General Rules

(a) Scientific reclassification or change in nomenclature of taxa at any level in taxonomic hierarchy will not, in and of itself, result in redefinition of a harmful or potentially harmful exotic species.

(b) Except as provided in §57.113 of this title (relating to Exceptions), it is an offense for any person to release into public waters, import, sell, purchase, transport, propagate, or possess any species, hybrid of a species, subspecies, eggs, seeds, or any part of any species defined as a harmful or potentially harmful exotic fish, shellfish, or aquatic plant.

(c) Violation of any provision of a permit issued under these rules is a violation of these rules.

Source Note: The provisions of this §57.112 adopted to be effective January 2, 1997, 21 TexReg 12414.

RULE §57.113 Exceptions

(a) A person who holds a valid Exotic Species Permit issued by the department may possess, propagate, sell and transport to the permittee's private facilities exotic harmful or potentially harmful fish, shellfish and aquatic plants only as authorized in the permit provided the harmful or potentially harmful exotic species are to be used exclusively:

(1) as experimental organisms in a department approved research program; or

(2) for exhibit in a public aquarium approved for display of harmful or potentially harmful exotic fish, shellfish and aquatic plants.

(b) A person may possess exotic harmful or potentially harmful fish or shellfish, exclusive of grass carp, without a permit, if the intestines of the fish or shellfish have been removed.

(c) A person may possess grass carp harvested from public waters that have not been permitted for triploid grass carp, without a permit, if the intestines have been removed.

(d) A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport or sell triploid grass carp (*Ctenopharyngodon idella*), silver carp (*Hypophthalmichthys molitrix*), triploid black carp (*Mylopharyngodon piceus*, also commonly known as snail carp), bighead carp (*Aristichthys/Hypophthalmichthys nobilis*), blue tilapia (*Tilapia aurea*), Mozambique tilapia (*Tilapia mossambica*), Nile tilapia (*Tilapia nilotica*), or hybrids between the three tilapia species, unless otherwise provided by conditions of the permit or these rules.

(e) A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport, or sell Pacific white shrimp (*Litopenaeus vannamei*) provided the exotic shellfish meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

- (f) An operator of a wastewater treatment facility in possession of a valid exotic species permit issued by the department may possess and transport permitted exotic species to their facility only for the purpose of wastewater treatment.
- (g) A person may possess Mozambique tilapia in a private pond subject to compliance with §57.116(d) of this title (relating to Exotic Species Transport Invoice).
- (h) The holder of a valid triploid grass carp permit issued by the department may possess triploid grass carp as provided by conditions of the permit and these rules.
- (i) A licensed retail or wholesale fish dealer is not required to have an exotic species permit to purchase or possess:
- (1) live individuals of species or hybrids of species listed in subsection (d) of this section held in the place of business, unless the retail or wholesale fish dealer propagates one or more of these species. However, such a dealer may sell or deliver these species to another person only if the intestines or head of the fish are removed; or
 - (2) Live Pacific white shrimp (*Litopenaeus vannamei*) held in the place of business if the place of business is not located within the Harmful or Potentially Harmful Exotic Species Exclusion Zone. However, such a dealer may only sell or deliver this species to another person if the shrimp are dead and packaged on ice or frozen.
- (j) The department is authorized to stock planktivorous fish including silver carp (*Hypophthalmichthys molitrix*) and bighead carp *Aristichthys/Hypophthalmichthys nobilis*) if necessary in Lake Rita Blanca, Hartley County, in order to investigate their utility as biological agents to improve water quality and enhance fishery management.
- (k) The department is authorized to stock triploid grass carp into public waters in situations where the department has determined that there is a legitimate need, and when stocking will not affect threatened or endangered species, coastal wetlands, or specific management objectives for other important species.
- (l) A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport and sell Pacific blue shrimp (*Litopenaeus stylirostris*) provided the exotic shellfish are cultured under quarantine conditions in private facilities located outside the harmful or potentially harmful exotic species exclusion zone, and meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.
- (m) Any person who, as of the effective date of these rules, holds a valid exotic species permit issued by the department to possess, propagate, transport or sell *Anguilla japonicus* may continue to conduct such activities as authorized by the conditions of the permit. The permit may not be transferred to any other person, site or entity.
- (n) An operator of a mechanical plant harvester in possession of a valid exotic species permit issued by the department may remove and dispose of prohibited plant species from public or private waters only by means authorized in the permit.

Source Note: The provisions of this §57.113 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective December 29, 1997, 22 TexReg 12535; amended to be effective June 21, 1998, 23 TexReg 6507; amended to be effective July 19, 2000, 25 TexReg 6772; amended to be effective April 30, 2001, 26 TexReg 3219

RULE §57.114

Health Certification of Exotic Shellfish

(a) All disease free certification of exotic shellfish must be conducted by a shellfish disease specialist approved by the department.

(b) Any person importing live exotic shellfish from facilities outside the state must prior to importation:

(1) provide documentation to the department that the shellfish to be imported have been inspected and certified as disease-free by a department-approved shellfish disease specialist; and

(2) receive acknowledgment from the department that the requirements of paragraph (1) of this subsection have been met.

(c) Any person in possession of exotic shellfish for the purpose of production of postlarvae must provide to the department monthly certification that nauplii and postlarvae have been examined and are certified to be disease-free. If certification cannot be provided, the exotic shellfish must be maintained in quarantine condition until the department acknowledges in writing that the stock is disease-free or specifies in writing condition(s) under which the quarantine can be removed.

(d) Any person in possession of exotic shellfish stocks who observes one or more of the manifestations of disease appearing on the clinical analysis checklist provided by the department shall:

(1) immediately quarantine the entire facility, immediately notify the department and immediately request an inspection from a department approved examiner; or

(2) immediately quarantine the entire facility, immediately notify the department and immediately submit samples of the affected shellfish to a department approved shellfish disease specialist for analysis. Results of such analyses shall be forwarded to the department immediately upon receipt.

(e) Upon receiving a request from a permit holder under subsection (d)(1) of this section, the department approved examiner shall inspect the private facility, complete the clinical analysis checklist provided by the department, and submit copies of the checklist to the department and the permit holder.

(f) Before discharging any waste for the first time in any calendar year into or adjacent to water in the state, the permittee shall:

(1) have a department approved examiner inspect the entire facility and examine samples of the shellfish from each pond or other structure containing exotic shellfish no more than 72 hours prior to the first discharge and shall submit the results of the examination to the department on the department approved clinical analysis checklist; or

(2) submit samples of the shellfish from each pond or other structure containing exotic shellfish to a department approved shellfish disease specialist for analysis no more than ten days prior to the first discharge and submit the results of such analyses to the department immediately upon receipt.

(g) If the results of an inspection performed under subsection (f)(1) of this section indicate the presence of one or more manifestations of disease, the permittee shall immediately place the entire facility under quarantine and immediately submit samples of the shellfish from the affected portion(s) of the facility to a department approved shellfish disease specialist for analysis. Results of such analyses shall be forwarded to the department immediately upon receipt.

(h) If the results of analyses performed under subsection (f)(2) of this section indicate the presence of disease, the permittee shall immediately place the entire facility under quarantine.

(i) A private facility quarantined under subsections (d), (g) or (h) of this section shall remain under quarantine condition until the department removes the quarantine in writing or authorizes in writing other actions deemed appropriate by the department based on the required analyses.

(j) If the results of inspections or testing performed under subsection (f) of this section indicate the absence of any manifestations of disease, the permittee may begin discharging from the facility.

Source Note: The provisions of this §57.114 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective December 29, 1997, 22 TexReg 12535; amended to be effective June 21, 1998, 23 TexReg 6507.

RULE §57.115 Transportation of Live Exotic Species

(a) Transport of live harmful or potentially harmful exotic species is prohibited except by:

(1) a fish farmer in possession of a valid Exotic Species Permit and an exotic Species Transport Invoice;

(2) a commercial shipper acting for the permit holder in possession of an Exotic Species Transport Invoice;

(3) persons holding exotic species pursuant to limitations of §57.113 of this title (relating to Exceptions).

(b) A fish farmer transporting live triploid grass or black carp must have sales invoices which account for all triploid grass or black carp being transported and a copy of the United States Fish and Wildlife Service certification declaring that the carp being transported have been certified as being triploid in addition to meeting requirements of Chapter 134 of the Agriculture Code.

Source Note: The provisions of this §57.115 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective April 30, 2001, 26 TexReg 3219

RULE §57.116 Exotic Species Transport Invoice

(a) An exotic species transport invoice shall contain all the following information correctly stated and legibly written: invoice number; date of shipment; name, address, and phone number of the shipper; name, address, and phone number of the receiver; fish farmer's Aquaculture license number and exotic species permit number, if applicable; number and total weight of each harmful or potentially harmful exotic species; a check mark indicating interstate import, interstate export, or intrastate type of shipment. A completed invoice shall accompany each shipment of harmful or potentially harmful exotic species sold or transferred, and shall be sequentially numbered during the permit period; no invoice number shall be used more than once during any one permit period by the permittee.

(b) The exotic species transport invoice shall be provided by the permittee; one copy shall be retained by the permittee for a period of at least one year following shipping date and one copy shall be forwarded to the department's Exotic Species Program Leader.

(c) The permittee is responsible for supplying completed copies of the exotic species transport invoice to out-of-state dealers from which the permittee has purchased and or received harmful or potentially harmful exotic species, or to whom harmful or potentially harmful exotic species are transferred so that shipment will be properly marked and numbered upon delivery to the permittee in Texas.

(d) Owners, or their agents, of private ponds stocked with Mozambique tilapia or triploid grass carp by an Exotic Species Permit holder shall retain a copy of the Exotic Species Transport Invoice for a period of one year after the stocking date or as long as the tilapia or triploid grass carp are in the water, whichever is longer.

Source Note: The provisions of this §57.116 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective July 19, 2000, 25 TexReg 6772; amended to be effective April 30, 2001, 26 TexReg 3219

RULE §57.117 Exotic Species Permit: Fee and Application Requirements

(a) The department shall charge a nonrefundable exotic species permit application fee as follows:

(1) application for new, renewed, or amended exotic species permit which requires facility inspection--\$250;

(2) application for renewed or amended exotic species permit requiring no facility inspection--\$25;

(3) renewal applications received more than one year after the renewal date will require an additional inspection and cost \$250.

(b) To be considered for an Exotic Species Permit, the applicant shall:

(1) meet one or more of the following criteria:

(A) possess a valid Aquaculture License;

(B) possess a valid permit from the Texas Natural Resource Conservation Commission authorizing operation of a wastewater treatment facility;

(C) possess a department approved research proposal involving use of harmful or potentially harmful exotic fish, shellfish or aquatic plants; or

(D) operate a public aquarium approved for display of harmful or potentially harmful exotic fish, shellfish or aquatic plants;

(2) complete and submit an initial exotic species permit application on a form provided by the department;

(3) submit an accurate-to-scale plat of the facility specifically including, but not limited to, location of:

(A) all private facilities and owner's name and physical address including a designation on the plat of all private facilities which will be used for possession of harmful or potentially harmful exotic species;

(B) all structures which drain private facilities;

(C) all points at which private facility effluent is discharged from the private facilities or the fish farm;

(D) all structures designed to prevent escapement of harmful or potentially harmful species from the fish farm;

(E) any vats, raceways, or other structures to be used in holding harmful or potentially harmful exotic species;

(4) demonstrate to the department that an existing fish farm, private facility or wastewater treatment facility meets requirements of §57.129 of this title (relating to Exotic Species Permit: Private Facility Criteria);

(5) remit to the department all applicable fees.

(c) Applicants for an exotic species permit for culture of harmful or potentially harmful exotic shellfish must meet all exotic species permit application requirements and requirements for disease free certification as listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish).

(d) An applicant for an exotic species permit shall provide upon request from the department documentation necessary to identify any harmful or potentially harmful exotic species and confirm the source of origin for the species for which a permit is sought.

(e) An applicant for an Exotic Species Permit whose facility is located within the harmful or potentially harmful exotic species exclusion zone as defined in §57.111 of this title (relating to Definitions) must submit an Emergency Plan to the department for review and approval. The plan shall include measures sufficient to prevent release or escapement of permitted harmful or potentially harmful exotic species into public water during a natural catastrophe (such as a hurricane or flood).

Source Note: The provisions of this §57.117 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective April 30, 2001, 26 TexReg 3219

RULE §57.118 Exotic Species Permit Issuance

(a) The department may issue an Exotic Species Permit only to:

(1) a fish farmer and only for species listed in §57.113 of this title (relating to Exceptions);

(2) a wastewater treatment facility operator;

(3) department approved research programs; or

(4) a public aquarium for display purposes only.

(b) The department may issue an exotic species permit upon a finding by the department that:

(1) all application requirements as set out in §57.117 of this title (relating to Exotic Species Permit: Fee and Application Requirements) have been met;

(2) the fish farm operated by the applicant and named in the permit meets or will meet the design criteria listed in §57.129 of this title (relating to Exotic Species Permit: Private Facility Criteria);

(3) the applicant has complied with all provisions of the Parks and Wildlife Code, §66.007, §66.015, and these rules during the one-year period preceding the date of application.

(c) Permits issued for fish farms, private facilities or wastewater treatment facilities under construction shall not authorize possession of harmful or potentially harmful exotic fish, shellfish or aquatic plants until such time as the department has certified that the fish farm, private facilities or wastewater treatment facility as-built meets the requirements in §57.129 of this title (relating to Exotic Species Permit: Private Facility Criteria).

Source Note: The provisions of this §57.118 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective July 19, 2000, 25 TexReg 6772; amended to be effective April 30, 2001, 26 TexReg 3219

RULE §57.119 Exotic Species Permit: Requirements for Permits

- (a) A copy of the Exotic Species Permit shall be:
 - (1) made available for inspection upon request of authorized department personnel; and
 - (2) prominently displayed on the premises of the fish farm, private facilities or wastewater treatment facility named in the permit.
- (b) Permittee must provide access to all facilities covered by the application to authorized department personnel during any hours in which operations pursuant to the exotic species permit are ongoing.
- (c) If a permittee discontinues fish farming, research activities or public aquarium display involving harmful or potentially harmful exotic species or discontinues wastewater treatment, the permittee shall:
 - (1) immediately and lawfully sell, transfer or destroy all remaining individuals of that species in possession; and
 - (2) notify the department's Exotic Species Program Leader at least 14 days prior to cessation of operation.
- (d) Upon a request, a permittee shall provide an adequate number of fish, shellfish, or aquatic plants to authorized department employees for identification and analyses.
- (e) In the event that the fish farm, private facilities or a wastewater treatment facility of a permit holder appears in imminent danger of overflow, flooding, or release of harmful or potentially harmful exotic fish, shellfish or aquatic plants into public water, the permittee shall:
 - (1) immediately notify the department;
 - (2) immediately begin implementation of the department approved Emergency Plan.
- (f) Except in case of an emergency, a holder of an exotic species permit authorizing possession of *Litopenaeus vannamei* must notify the department at least 72 hours prior to, but not more than seven days prior to any harvesting of permitted shellfish. In an emergency beyond the control of the permittee, notification of harvest must be made as early as practicable prior to beginning of harvest operations.
- (g) A holder of an exotic species permit authorizing possession of harmful or potentially harmful exotic species may sell or transfer ownership of live individuals only to the holder of a valid exotic species permit specifically authorizing possession of transferred species.
- (h) Upon discovery of release or escapement of harmful or potentially harmful exotic fish or shellfish from any private facilities authorized in an exotic species permit, the permittee must immediately halt discharge of all private facility effluent from the fish

farm. If the permittee's private facility is located within a fish farm complex, upon discovery or release or escapement of harmful or potentially harmful fish or shellfish, the permittee must immediately halt discharge of all private facility effluent.

(i) A holder of an exotic species permit must notify the department's Exotic Species Program Leader in the event of escapement or release of harmful or potentially harmful exotic fish or shellfish, within two hours of discovery.

(j) All devices required in the exotic species permit for prevention of discharge of harmful or potentially harmful exotic fish, shellfish, or aquatic plants must be in place and properly maintained prior to and at all times such species are in possession.

(k) All private facility effluent discharged from a fish farm holding exotic harmful or potentially harmful species must be routed through all devices for prevention of discharge of exotic species as required in the permit.

(l) A permittee must notify the department's Exotic Species Program Leader in the event of change of ownership of the fish farm named in that permittee's exotic species permit. Notification must be made immediately.

(m) Permits are not transferable from site to site.

Source Note: The provisions of this §57.119 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective July 19, 2000, 25 TexReg 6772

RULE §57.120 Exotic Species Permit: Expiration and Renewal

(a) Exotic Species Permits required by these rules expire on December 31 of the year issued.

(b) The department may renew an Exotic Species Permit upon finding that:

(1) the applicant has met application requirements in §57.117 of this title (relating to Exotic Species Permit: Fee and Application Requirements);

(2) the facility will meet all applicable facility design criteria listed in §57.129 of this title (relating to Exotic Species Permit: Private Facility Criteria);

(3) the applicant has complied with all provisions of the Parks and Wildlife Code, §66.007, §66.015, and these rules during the one-year period preceding the date of agency action on the application for renewal; and

(4) the applicant has submitted a renewal application and all required annual reports to the department as required in §57.123(a) and (b) of this title (relating to Exotic Species Permit Reports).

Source Note: The provisions of this §57.120 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective April 30, 2001, 26 TexReg 3219

RULE §57.121 Exotic Species Permit--Amendment

(a) Exotic species permits may be amended upon a finding by the department that:

(1) the applicant has complied with all provisions of the Parks and Wildlife Code, §66.007, §66.015, all conditions in permit, and these rules during the one-year period preceding the date of application;

(2) the applicant has met all applicable application requirements under §57.117 of this title (relating to Exotic Species Permit--Fee Application Requirements); and

(3) the facilities as altered will meet the private facility criteria in §57.129 of this title (relating to Exotic Species Permit).

(b) Exotic species permits must be amended to reflect any:

(1) addition or deletion of species of harmful or potentially harmful exotic fish, shellfish, or aquatic plants held pursuant to the permit;

(2) intended redistribution of harmful or potentially harmful fish, shellfish, and aquatic plants into private facilities not authorized in the permit;

(3) change in methods of preventing discharge of harmful or potentially harmful exotic fish, shellfish, and aquatic plants;

(4) change in discharge of private facility effluent from fish farms or wastewater treatment facilities; and

(5) change in existing design criteria listed in §57.129 of this title (relating to Exotic Species Permit--Private Facility Criteria).

(c) Applicants seeking amendment of exotic species permits, including those issued prior to January 23, 1992, must meet all application requirements listed in §57.117 of this title (relating to Exotic Species Permit--Fee and Application Requirements) and facility design criteria listed in §57.129 of this title (relating to Exotic Species Permit--Private Facility Criteria).

Source Note: The provisions of this §57.121 adopted to be effective January 2, 1997, 21 TexReg 12414.

RULE §57.122 Appeal

An opportunity for hearing shall be provided to the applicant or permit holder for any denial of an exotic species permit or a triploid grass carp permit or where the terms of issuance are different from those requested by the applicant.

(1) Requests for hearings shall be made in writing to the department no more than 30 days from receipt of the denial notification.

(2) All hearings shall be conducted in accordance with the rules of practice and procedure of the Texas Parks and Wildlife Department and the Administrative Procedure Act.

Source Note: The provisions of this §57.122 adopted to be effective January 2, 1997, 21 TexReg 12414.

RULE §57.123 Exotic Species Permit Reports

(a) The Exotic Species Permit holder shall submit an annual report that accounts for importation, possession, transport, sale, transfer or other disposition of any harmful or potentially harmful exotic species handled by the permittee. This report shall be submitted on forms provided by the department with the application and shall be due January 10 of each year.

(b) An Exotic Species Permit holder who has imported, possessed, transported, transferred or sold triploid grass carp shall provide a copy of each exotic species transport invoice issued and a copy of each triploid grass carp certification received by the permittee for triploid grass carp purchased during the past year with their annual report.

Source Note: The provisions of this §57.123 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective July 19, 2000, 25 TexReg 6772

RULE §57.124 Triploid Grass Carp; Sale, Purchase

(a) Triploid grass carp may be sold only by a holder of an exotic species permit authorizing possession of triploid grass carp, and only to:

(1) a person in possession of a valid exotic species permit authorizing possession of triploid grass carp; or

(2) a person in possession of a valid triploid grass carp permit, and only in an amount less than or equal to that number specified in the permit.

(b) A person who holds a valid triploid grass carp permit may purchase triploid grass carp only from a Texas fish farmer in possession of a valid exotic species permit authorizing possession of triploid grass carp, and only in an amount less than or equal to that number specified in the triploid grass carp permit.

(c) A holder of an exotic species permit may obtain triploid grass carp only from:

(1) the holder of a valid exotic species permit authorizing possession of triploid grass carp; or

(2) a lawful source outside of the state.

(d) A fish farmer in possession of an exotic species permit must notify the department not less than 72 hours prior to taking possession of any and all shipments of triploid grass carp received from any source. Notification must include:

(1) number of triploid grass carp being purchased;

(2) source of triploid grass carp;

(3) final destination of triploid grass carp;

(4) name of certifying authority who conducted triploid grass carp certification; and

(5) name, address and fish farmer's Aquaculture license number (if applicable) of both shipper and receiver.

Source Note: The provisions of this §57.124 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective April 30, 2001, 26 TexReg 3219

RULE §57.125 Triploid Grass Carp Permit; Application, Fee

(a) The department may issue a triploid grass carp permit to private individuals for stocking of triploid grass carp in private waters.

(b) To be considered for a triploid grass carp permit, the applicant shall:

(1) complete an initial triploid grass carp permit application on a form provided by the department;

(2) submit this application to the department not less than 30 days prior to the proposed stocking date; and

The department may deny a triploid grass carp permit upon a finding that the applicant fails to satisfy any of the required criteria for issuance of a permit listed in §57.124 of this title (relating to Triploid Grass Carp; Sale, Purchase).

Source Note: The provisions of this §57.127 adopted to be effective January 2, 1997, 21 TexReg 12414.

RULE §57.128 Exotic Species Permits, Triploid Grass Carp Permits; Revocation

The department may revoke an exotic species permit or a triploid grass carp permit upon a finding that the permittee has violated any provision in these rules or rules promulgated under the Parks and Wildlife Code, §66.015, or any conditions of the permit during the valid permit period.

Source Note: The provisions of this §57.128 adopted to be effective January 2, 1997, 21 TexReg 12414.

RULE §57.129 Exotic Species Permit: Private Facility Criteria

- (a) The fish farm or wastewater treatment facility must be designed to prevent discharge of water containing adult or juvenile harmful or potentially harmful exotic species, their eggs, seeds or other reproductive parts from the permittee's property.
- (b) Fish farms holding harmful or potentially harmful exotic fish or shellfish shall have at least three appropriately designed and constructed permanent screens placed between any point in the fish farm where harmful or potentially harmful exotic fish or shellfish are intended to be in water on the fish farm and the point where private facility effluent first leaves the fish farm.
 - (1) Screen mesh shall be of an appropriate size for each stage of exotic fish or shellfish growth and development.
 - (2) One screen must be permanently affixed in front of the final discharge pipe in the harvest structure and remain in place while the pond is in use. This screen and backing material must be of sufficient strength to withstand a water level differential of the height of the discharge area.
 - (3) At those facilities which discharge into public waters, one screen must be secured over the terminal end of the discharge pipe at all times. This screen must be secured in such a fashion as to prevent escape of permitted species. A second, additional screen must be secured over the terminal end of the discharge pipe during all harvest activities.
 - (4) Screens must be designed and constructed such that screens can be maintained and cleaned without reducing the level of protection against release of harmful or potentially harmful exotic fish or shellfish. The department may approve alternate methods of preventing discharge of harmful or potentially harmful exotic fish or shellfish upon a finding that those methods are at least as effective in preventing discharge of adult or juvenile harmful or potentially harmful exotic species, their eggs, or other reproductive parts from the permittee's property. The point of discharge of all mechanical harvesting

devices must be double screened to prevent escapement of harmful or potentially harmful fish or shellfish.

(c) Fish farms which are to contain species or hybrids of species listed in §57.113 of this title (relating to Exceptions) and wastewater treatment facilities containing permitted exotic species which are within the 100-year flood plain, referred to as Zone A on the National Flood Insurance Program Flood Insurance Rate Map, must be enclosed within an earthen or concrete dike or levee constructed in such a manner to exclude all flood waters and such that no section of the crest of the dike or levee is less than one foot above the 100-year flood elevation. Dike design or construction must be approved by the department before issuance of a permit.

(d) Fish farms containing harmful or potentially harmful exotic shellfish shall be capable of segregating stocks of shellfish which have not been certified as free of disease from other stocks of shellfish on that fish farm.

(e) A fish farm containing harmful or potentially harmful exotic fish or shellfish must have in place security measures designed to prevent unrestricted or uncontrolled access to any private facilities containing harmful or potentially harmful exotic fish or shellfish. Security measures must prevent unauthorized removal of such species from the fish farm.

(f) For fish farms that are part of a fish farm complex, the following additional facility standards shall apply.

(1) Each permittee shall maintain in the common drainage at least one screen for preventing the movement of harmful or potentially harmful exotic fish or shellfish between the point where private facility effluent from the permittee's fish farm enters the common drainage and each point where an adjacent fish farmer's private facility effluent enters the common drainage. The adequacy of design and construction of such screens or other structures shall be determined by the department as provided in subsection (a)(1) of this section.

(2) Each permittee within the complex must have authority to stop the discharge of private facility effluent from the complex in the event of escapement or release of such fish or shellfish from that permittee's fish farm.

Source Note: The provisions of this §57.129 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective April 30, 2001, 26 TexReg 3219

RULE §57.130 Exotic Species Interstate Transport Permit

(a) Transport of live harmful or potentially harmful exotic species originating from a point of origin outside the state of Texas and being transported through Texas to a destination outside of the state of Texas is prohibited except by the holder of an Exotic Species Permit or an Exotic Species Interstate Transport Permit.

(b) Anyone transporting live harmful or potentially harmful exotic species must provide documentation accounting, collectively, for all exotic species being transported.

Source Note: The provisions of this §57.130 adopted to be effective January 2, 1997, 21 TexReg 12414.

**RULE §57.131 Exotic Species Interstate Transport Permit:
Application and Issuance**

- (a) The department shall charge a nonrefundable Exotic Species Interstate Transport Permit application fee of either:
 - (1) \$25 for individual permits; or
 - (2) \$100 for an annual permit.
- (b) To apply for an Exotic Species Interstate Transport Permit an applicant shall:
 - (1) complete and submit an Exotic Species Interstate Transport Permit application on a form provided by the department;
 - (2) remit to the department's Exotic Species Program Leader all applicable fees.
- (c) An applicant for an Exotic Species Interstate Transport Permit shall provide documentation upon request from the department necessary to identify any harmful or potentially harmful exotic species and source of origin of the species for which the permit is sought.
- (d) The department may issue an Exotic Species Interstate Transport Permit upon a finding that all provisions of subsections (a)-(c) of this section have been met.

Source Note: The provisions of this §57.131 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective July 19, 2000, 25 TexReg 6772

**RULE §57.132 Exotic Species Interstate Transport Permit:
Permittee Requirements**

- (a) A copy of the Exotic Species Interstate Transport Permit shall be made available for inspection immediately upon request of authorized department personnel.
- (b) Permittee must provide access to shipments of exotic species to authorized department personnel during the effective date of the permit.
- (c) Permittee must notify the department's Exotic Species Program Leader in writing or by facsimile transmission at least 72 hours prior to transport of live harmful or potentially harmful exotic species indicating transport date, intended transportation route, and name and physical address of recipient.
- (d) While transporting harmful or potentially harmful exotic species within the state of Texas, a holder of an Exotic Species Interstate Transport Permit must notify the department's Exotic Species Program Leader in the event of escapement or release of harmful or potentially harmful exotic species within two hours of release.
- (e) Except as provided by the terms and conditions of the Exotic Species Interstate Transport Permit, offloading or transfer of shipments of harmful or potentially harmful exotic species in the state of Texas is prohibited.

Source Note: The provisions of this §57.132 adopted to be effective January 2, 1997, 21 TexReg 12414; amended to be effective July 19, 2000, 25 TexReg 6772

**RULE §57.133 Exotic Species Interstate Transport Permit:
Expiration and Renewal**

- (a) Exotic Species Interstate Transport Permits expire as stated on the permit.
- (b) A separate Exotic Species Interstate Transport Permit must be issued for each vehicle, trailer or other such transporting unit when transporting live harmful or potentially harmful species through the state.

Source Note: The provisions of this §57.133 adopted to be effective January 2, 1997, 21 TexReg 12414.

RULE §57.134 Wastewater Discharge Authority

- (a) An applicant for an initial exotic species permit must provide the following:
 - (1) written documentation demonstrating that the applicant possesses the appropriate valid wastewater discharge authorization or has received an exemption from the Texas Natural Resource Conservation Commission if the fish farm, fish farm complex or private facility is designed such that a discharge of waste into or adjacent to water in the state will, or is likely to occur; or
 - (2) adequate documentation to demonstrate that the facility is designed and will be operated in a manner such that no discharge of waste into or adjacent to water in the state will, or is likely to occur.
- (b) An applicant for an amendment or a renewal of an exotic species permit must provide the following:
 - (1) written documentation demonstrating that the applicant possesses or has timely applied for and is diligently pursuing the appropriate wastewater discharge authorization or exemption from the Texas Natural Resource Conservation Commission in accordance with 30 TAC Chapter 321, Subchapter O, if the fish farm, fish farm complex or private facility is designed such that a discharge of waste into or adjacent to water in the state will, or is likely to occur; or
 - (2) adequate documentation to demonstrate that the facility is designed and will be operated in a manner such that no discharge of waste into or adjacent to water in the state will, or is likely to occur.
- (c) An exotic species permittee whose wastewater discharge authorization or exemption is revoked, suspended or annulled by the Texas Natural Resource Conservation Commission will be treated as an applicant for an initial permit under subsection (a) of this section.

Source Note: The provisions of this §57.134 adopted to be effective December 29, 1997, 22 TexReg 12535.

RULE §57.135 Memorandum of Understanding between the Texas Parks and Wildlife Department, the Texas Natural Resource Conservation Commission, and the Texas Department of Agriculture

The provisions of 30 TAC §7.103 (relating to Memorandum of Understanding (MOU) between the Texas Natural Resource Conservation Commission (Commission), the Texas Parks and Wildlife Department (TPWD), and the Texas Department of Agriculture

(TDA), which were adopted by TNRCC to take effect January 9, 2001, are adopted by reference.

Source Note: The provisions of this §57.135 adopted to be effective December 29, 1997, 22 TexReg 12535; amended to be effective July 26, 2001, 26 TexReg 5422

RULE §57.136 Penalties

The penalties for violation of this subchapter are prescribed by Parks and Wildlife Code, §66.012.

Source Note: The provisions of this §57.136 adopted to be effective December 29, 1997, 22 TexReg 12535.